S.B.CIVIL SECOND APPEAL NO.161/2004

Deen Mohammad
vs.
Hasmat Khan & Anr.

DATE OF JUDGMENT ::: 19.1.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. HR Soni, for the appellant.
Mr. Amitabh Acharya, for the respondent.

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Heard learned counsel for the appellant.

The plaintiff/appellant is aggrieved against the judgment and decree of the appellate court dated 19.2.2004 by which the first appellate court reversed the findings of the trial court and dismissed the suit of the plaintiff.

Brief facts of the case are that the plaintiff filed a suit for eviction of his tenant/defendant no.1 Hasmat Khan. The defendant no.2 became party in the suit with the allegation that he is tenant and not the sub-lette of Hasmat Khan. The trial court held that the defendant no.1 is tenant and the defendant no.2 is sub-tenant. This finding was reversed by the first appellate court after considering the evidence of the parties and particularly, the diary produced by the defendant no.2 and after taking

note of the fact that the defendant no.1, the alleged tenant in chief, not only supported the plaintiff but also appeared as witness of the plaintiff which cast serious doubt on credibility of the defendant no.1.

I perused the submissions of learned counsel for the parties and facts of the case.

It is clear from the reasons given by the appellate court that the first appellate court considered the evidence of the parties and arrived at the conclusion that the defendant no.2 is not the sub-lette and is tenant in the suit shop.

It will be worthwhile to mention here that the suit shop was let out in 1980 and admittedly, the defendant no.2 was in occupation of the suit shop and according to the defendant no.1 and plaintiff, as the servant of the defendant no.1. Whereas according to the defendant no.2, he is tenant and is paying rent since 1985 and thereafter increased the rent several times from Rs.125/- to Rs.175/-, Rs.300/- and, thereafter, Rs.350, Rs.450/- and lastly to Rs.600/- per month. It will be relevant to mention here that the defendant no.1, alleged tenant in chief of the plaintiff, who appeared as witness of the plaintiff stated that he still has not vacated the suit shop and even after selling the lath machine, he used to visit the shop, therefore, the plaintiff's own witness says that the tenant in chief if he was defendant no.1, then he is in possession of the suit shop. However, this statement was not relied

upon either by the plaintiff nor by the court below. Therefore, I do not find that the first appellate court has committed any error in not relying upon the statement of the defendant no.1 and drawing inference in favour of defendant no.2 and in reversing the findings of the trial court on the issue of subletting.

In view of the above, I do not find any substantial question of law involved in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya